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No. 178

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

CHARLES S. ROBERTS, upon his own behalf and on behalf of all other stockholders of OLD TOWN CORPORATION,

Petitioner,

v.

JOSEPH S. EATON, et al.,

Respondents,

AND

OLD TOWN CORPORATION, et al.,

Defendants.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

HENRY H. SHEPARD,
MURRAY C. BERNAYS,
Counsel for Petitioner,
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August 12, 1954

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REPLY BRIEF OF PETITIONER

This reply brief deals only with the respondents' argument regarding Question No. 1 presented in our petition (p. 6), discussed in Points I and II of the brief attached thereto (pp. 14-20).

The respondents agree that under Section 16(b) "The power of exemption is conferred solely on the Commission" and may not be exercised by the courts (Respondents' Brief, p. 15). Their only contention is that "no such thing happened here" (*ibid.*) and therefore our first question is not presented.

But the only ground for a grant of exemption by the Commission is that the exempted transaction is "not comprehended within the purpose" of Section 16(b) (viz., to prevent

unfair use of information by insiders); and it was on precisely that ground, and that ground alone, that the Court below held that there was no "purchase" in this case within the meaning of the section.

The respondents' reliance is therefore upon the circumstance that the Court did not *say* that it was granting an "exemption" upon the statutory ground, but declared instead that it was "immunizing" the transaction upon that ground. This is an argument of semantics, not of substance.

Whether the action of the Court below be called "exemption" or "immunization" does not touch the substance. The nature of the action, the ground therefor, and the result, are identical under either characterization.

Accordingly, the error and ill consequences set out in our petition and brief are indeed presented for consideration. These the respondents' brief does not touch.

The writ prayed for should be granted.

Respectfully submitted,

HENRY H. SHEPARD,
MURRAY C. BERNAYS,
Counsel for Charles S. Roberts, upon his own behalf and on behalf of all other stockholders of Old Town Corporation,

Petitioner.

August 12, 1954.